IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 312 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

BHASKARBHAI VASUDEV RAVAL

Appearance:

MR KP RAVAL, APP. for Petitioner

MR SV RAJU for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 07/07/2000

ORAL JUDGEMENT

A crimial complaint (Criminal Case No. 1414 of 1990) was filed against the respondent in the Court of learned Judicial Magistrate, First Class, Prantij for the offences punishable under sections 406, 420, 34 of Indian

Penal Code and also under sections 3(1), 9, 10 and 11 of The Gujarat Education Act. The respondent gave application under section 239 of the Code of Criminal Procedure for discharge. The learned Magistrate by his order dated 22.11.1991 allowed the said application and discharged the respondent accused. Being aggrieved by the said order of discharge, the State of Gujarat filed the Revision Application in the Court of learned Sessions Judge, Himmatnagar and since there was delay of 28 days, an application for condonation of delay (Misc.Criminal Application No.116 of of 1992) was filed. The learned Sessions Judge held that the time taken in correspondence with the legal department cannot be considered for condonation of delay. The learned Sessions Judge therefore dismissed the application for condonation of delay by judgment and order dated 21.07.1992.

It is the said order of the learned Sessions Judge which is under challenge in the present Criminal Revision Application.

The learned Counsel for the respondent contended that the learned Sessions Judge has rightly refused to condone the delay and the discretion exercised by the learned Sessions Judge cannot be interfered with. On the other hand, Shri K.P.Raval, the learned APP, cited the decision of the Supreme Court in State of Haryana Vs. Chandra Mani (AIR 1996 SC 1623) in which the Supreme Court in para 10 has held as follows :

"10. It is notorious and common knowledge that delay in more than 60 per cent of the cases filed in this Court - be it by private party or the State - are barred by limitation and this Court generally adopts liberal approach in condonation of delay finding somewhat sufficient cause to decide the appeal on merits. It is equally common knowledge that litigants including the State are accorded the same treatment and the law is administered in an evenhanded manner. When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community. It is axiomatic that decisions are taken by

officer/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay - intentional or otherwise - is a routine. Considerable delay of procedural red tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the Governmental conditions would be cognizant to and require adoption of pragmatic approach in justice-oriented process. The Court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-a-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the Courts or whether cases require adjustment and should authorise the officers take a decision or give appropriate permission for settlement. In the event of decision to file appeal needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants. Considered from the perspective, it must be held that the delay of 109 days in this case has been explained and that it is a fit case for condonation of the delay."

It is thus clear that the learned Sessions Judge

has not exercised the discretion according to well settled principles for condonation of delay and the order of the learned Sessions Judge cannot be said to be legal and proper. The decision of the Supreme Court in Lala Bal Mukand(Dead) by L.Rs. Vs.Lajwanti (AIR 1975 SC 1089) cited on behalf of the respondent has no application to the facts of the present case.

The result is that the revision application is allowed. The order dated 21.7.1992 passed by the learned Sessions Judge, Sabarkantha at Himmatnagar in Criminal Miscellaneous Application No.116 of 1992 is set aside and the said application for condonation of delay is allowed. The learned Sessions Judge may therefore proceed to decide the Criminal Revision Application against the order of discharge on merits. Rule made absolute accordingly.